

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**Ryan Barnard,**

**Plaintiff,**

**v.**

**Firebirds of Richmond, LLC,**

**and**

**Firebirds International, Inc.,**

**Defendants.**

**CIVIL ACTION NO. \_\_\_\_\_**

**COMPLAINT**

Plaintiff Ryan Barnard respectfully moves for judgment against Defendants Firebirds of Richmond, LLC, and Firebirds International, Inc., (collectively “Firebirds” or “Defendants”):

**Introduction**

1. This is a claim for unpaid minimum and overtime wages in violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., (“FLSA”). Plaintiff seeks unpaid minimum and overtime wages, liquidated damages, and attorney’s fees and costs arising out of the Defendants’ FLSA violations.

**Jurisdiction and Venue**

2. This Court has jurisdiction pursuant to 29 U.S.C. § 216(b) in that the Plaintiff may bring this action in any appropriate United States District Court.

3. Venue is proper for this Court pursuant to 28 U.S.C. § 1391 and Local Rule 3(B)(4) since the acts and omissions giving rise to this lawsuit have taken place in the Eastern District of Virginia.

4. Defendants are subject to personal jurisdiction in the Commonwealth of Virginia.

### **Parties**

5. Barnard is a resident of Virginia who was employed by Defendants as a Server. Plaintiff was an “employee” as defined in the FLSA.

6. Firebirds of Richmond, LLC is a foreign corporation, which purports to have its principal office in North Carolina.

7. On information and belief, Firebirds International Inc. is a North Carolina corporation, and owns in whole or part, various Firebirds restaurants across the country, including Firebirds of Richmond, LLC.

8. Firebirds is in the restaurant and hospitality industry, operating steakhouses throughout the U.S. According to filings with the Virginia State Corporation Commission, Firebirds lists its principal office as being located at 13850 Ballantyne Corporate Place, Suite 450, Charlotte, North Carolina 28277 with two (2) locations at 11800 W Broad Street, Richmond, Virginia 23233 (Henrico County) and 11448 Belvedere Vista Lane, Richmond, Virginia 23235 (Chesterfield County). Firebirds is an “employer” as defined by the FLSA.

### **Allegations**

9. Barnard worked as a Server at Defendants' location in Henrico County, Virginia.

10. Barnard was hired by Defendants around October 2015.

11. Barnard’s duties included waiting tables, training new servers, cooking in the

kitchen, closing the restaurant, cleaning, sweeping, and "prepping" for the next shift.

12. Barnard was regularly scheduled to work 35-40 hours per week.

13. Barnard often worked as the "closing server" which meant that he stayed late performing duties to help close down the restaurant, usually about 1.5 hours after the last patrons left.

14. Barnard was paid \$2.13 per hour for all of his hours worked, plus tips.

15. Barnard was deprived of minimum wage and/or overtime premium for hours he spent working more than 40 hours per week.

16. Defendants knew or should have known that Barnard was working hours without being paid the full minimum wage and/or overtime premium.

17. Firebirds is not entitled to the benefit of the tip credit where Barnard spent significant time performing non-tip duties.

18. On information and belief, Defendants have claimed the tip credit but did not actually give Plaintiff adequate notice as required by the FLSA.

19. On information and belief, a manager of Defendants willfully violated the FLSA by altering Plaintiff's hours and/or editing his timesheets to underreport his actual hours worked in order to knowingly avoid paying him properly.

20. Firebirds is not entitled to the tip credit where they failed to pay any wages for hours Barnard worked as a result of manipulating his time records.

21. Barnard worked at least several shifts as a cook in the kitchen, for which Firebirds only compensated him at \$2.13 per hour.

22. Barnard left employment of Defendants around November 2017.

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